IN THE HIGH COURT OF JUDICATURE AT BOBBY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1695 OF 2004

1) A. Satheesan,)
Assistant Director (QA),)
Directorate of Quality Assurance,)
Director General of Supplies)
and Disposals,)
At present)
Department of Commerce,)
Department of Supply,)
Ministry of Commerce,)
Aayakar Bhavan(Annexe),)
New Marine Lines,)
Mumbai 400 020)
Residing at)
D-618, Maruti Paradise,)
Sector 15, CBD-Belapur,)
Navi Mumbai 400 614.)

2) A.D. Deshpande)
Assistant Director (QA),)
Directorate of Quality Assurance,)
Director General of Supplies)
and Disposals,)
At present)
Department of Commerce,)
Department of Supply,)
Ministry of Commerce,)
Aayakar Bhavan(Annexe),)
New Marine Lines,)
Mumbai 400 020)
Residing at)
Damodar Krupa, 1st Floor,)
Liberty Garden No.2,)
Malad (West),)
Mumbai 400 064.)

3) Om Prakash Tuteja)
Assistant Director (QA),)
Directorate of Quality Assurance,)
Director General of Supplies)
and Disposals,)
At present)
Department of Commerce,)
Department of Supply,)
Ministry of Commerce,)

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New Marine Lines,)
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Residing at : E-312, Saurabh,)
7 Bungalows,)
Andheri (West),)
Mumbai 400 053.)

4) Kailash Sainani)
Assistant Director (QA),)
Directorate of Quality Assurance,)
Director General of Supplies)
and Disposals,)
At present)
Department of Commerce,)
Department of Supply,)
Ministry of Commerce,)
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New Marine Lines,)
Mumbai 400 020)
Residing at : 21, Blue Heaven,)
Carter Road, Khar,)
Mumbai 400 052.)

5) K.L. Thawrani,)
Assistant Director (QA),)
Directorate of Quality Assurance,)
Director General of Supplies)
and Disposals,)
At present)
Department of Commerce,)
Department of Supply,)
Ministry of Commerce,)
Aayakar Bhavan(Annexe),)
New Marine Lines,)
Mumbai 400 020)
Residing at : 1, ROSITA,)
Waroda Road, Off Hill Road,)
Bandra (West),)
Mumbai 400 050.)

6) J.P. Saxena)
Assistant Director (QA),)
Directorate of Quality Assurance,)
Director General of Supplies)
and Disposals,)
At present)
Department of Commerce,)
Department of Supply,)
Ministry of Commerce,)

Aayakar Bhavan(Annexe),
New Marine Lines,
Mumbai 400 020
Having his permanent address as :
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Kanpur.

7) Subhash Chander Vohra
Assistant Director (QA),
Directorate of Quality Assurance,
Director General of Supplies
and Disposals,
At present
Department of Commerce,
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Ministry of Commerce,
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Residing at : Flat No.2/7,
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Sector - 3, Vashi,
Navi Mumbai 400 703.

8) S. Gangopadhyaya
Assistant Director (QA),
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Director General of Supplies
and Disposals,
At present
Department of Commerce,
Department of Supply,
Ministry of Commerce,
Aayakar Bhavan(Annexe),
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Mumbai 400 020
Having his permanent address as:
6, Dineshwar Chatterjee Road,
Bali : PO,
Howrah Dist,
West Bengal - Pin 711 201

9) Dinesh Chandra
Assistant Director (QA),
C/o.Dy.Director of Quality Assurance
(Director General of Supplies
and Disposals),
Department of Supply,
Ministry of Commerce, Pune
Residing at : Flat No.7,

Sayli Apartments,)
Kasturba Hsg.Society Ltd.,)
Vishrant Wadi,)
Pune 411 015.)

10) A.F. Saldhana,)
Assistant Director (QA),)
Dy.Director of Quality Assurance,)
(Director General of Supplies)
and Disposals),)
Department of Supply,)
Ministry of Commerce, Pune)
Residing at : B-10/10,)
Shantiban Co-op.Hsg.Society,)
Paud Road,)
Kothrud,)
Pune 411 038.)

11) Ramesh Kumar Malhora)
Ex-Assistant Director (QA),)
Directorate of Quality Assurance,)
Director General of Supplies)
and Disposals,)
Department of Commerce,)
Department of Supply,)
Ministry of Commerce,)
Aayakar Bhavan(Annexe),)
New Marine Lines,)
Mumbai 400 020)
Residing at : Flat No.15,)
Usha Kamal C.H. Society,)
Sector 15, Plot No.28-28A,)
Vashi,)
Navi Mumbai 400 703.)

12) Dass Kumar)
Ex-Assistant Director (QA),)
Directorate of Quality Assurance,)
Director General of Supplies)
and Disposals,)
Department of Commerce,)
Department of Supply,)
Ministry of Commerce,)
Aayakar Bhavan(Annexe),)
New Marine Lines,)
Mumbai 400 020)
Residing at : Plot No. 189,)
Ground Floor, Sector 8,)
Vashi,)
Navi Mumbai 400 703.)

13) D.P. Mathur)
Assistant Director (QA),)
Directorate of Quality Assurance,)
Director General of Supplies)
and Disposals,)
At present)
Department of Commerce,)
Department of Supply,)
Ministry of Commerce,)
Aayakar Bhavan(Annexe),)
New Marine Lines,)
Mumbai 400 020)
Residing at : Qtr No. 958,)
Building No. 103, Sector - I,)
C.G.S. Colony,)
Kane Nagar,)
Mumbai 400 037.)

14) Prabhodh Chandra Sharma)
Residing at)
Shilpa Apartment,)
7/7, New Palasia,)
Indore 452 018)

15) Kolake Raja Shekara Mayya,)
Residing at)
A-20, Mourya Garden,)
Opp.Guruganesh Nagar Society,)
Kothrud, Pune 411 029.)

16) J. Rajasekaran,)
Residing at)
Flat No.2369, Building No.200,)
Kane Nagar, Sector VI,)
CGS Colony,)
Antop Hill,)
Mumbai 400 037.)...Petitioners

V/s.

1) The Union of India,)
Through The Secretary,)
Ministry of Commerce,)
Nirman Bhavan,)
New Delhi 110 001.)

2) Secretary to the)
Government of India)
Department of Supply,)

Government of India,)
Nirman Bhavan,)
New Delhi 110 001)

3) Director General of)
Supplies and Disposals,)
Department of Supply,)
Government of India,)
Jeevanthara, Sansad Marg,)
New Delhi 110 001)

4) Director,)
Directorate of Quality Assurance,)
D.G.S.&D.)
Department of Supply,)
Government of India,)
Aayakar Bhavan (Annexe))
New Marine Lines,)
Mumbai 400 020.)...Respondents

Mr.R.G. Whales for Petitioners.
Mr.A.C. Singh for Respondents.

CORAM : DR.S. RADHAKRISHNAN &
V.M. KANADE, JJ.

DATED : SEPTEMBER 12, 2006

ORAL JUDGMENT (PER V.M. KANADE, J.) :-

1. By this petition, the petitioners are challenging the Order passed by the Central Administrative Tribunal dated 20th June, 2006 in Original Application Nos.871/2000 and 693 of 2002. The petitioners are seeking a writ of mandamus directing the respondents to grant the same benefits to the petitioners as were granted by the Central Administrative Tribunal, Calcutta Bench in Original

Application No.757 of 1990.

2. Brief facts which are relevant for the purpose of deciding the present petition are as under :-

3. The petitioners initially joined the services in Directorate General of Supplies and Disposals (DGS&D), Department of Supply, as Examiners of Stores (Textile / Engineering) in the pay scale of Rs.425-700 (PR). It is an admitted position that the pay scale of Draughtsman was similar to that of the petitioners at the relevant time. On 1st February, 1988, the pay scale of the Draughtsman was revised. A representation was made by some of Examiners of Stores and a request was made to grant them a special pay scale as was granted to the Draughtsman. Their representation was rejected in July 1989.

4. Some of the Examiners of Stores through their Association filed Original Application before the Calcutta Bench of Central Administrative Tribunal praying for parity of pay scale to the post of Examiner

of Stores and Senior Draughtsman.

5. By Judgment and Order dated 19th December, 1996, the Central Administrative Tribunal, Calcutta Bench allowed Civil Application No.757/1990 and directed the respondents to grant pay scales to the post of Examiner of Stores as that of Senior Draughtsman.

6. Review Petition which was filed by the respondents was rejected by Order dated 25th January, 2000.

7. The petitioners being similarly placed persons were not given the same benefits as were given to the persons who are working in Calcutta and therefore, they filed Original Application Nos.871/2000 and 693/2002 at Mumbai Bench. The Central Administrative Tribunal, Mumbai Bench dismissed these applications only on the ground of limitation.

8. Learned Counsel appearing on behalf of the petitioners submitted that the impugned order was liable

to be set aside since the cause of action which had accrued in favour of the petitioners was a continuing cause of action on non-payment of revised pay scales every month. He relied upon the Judgment of the Supreme Court in the case of **Basic Shiksha Parishad and Another V.s. Sugna Devi (Smt.) and Others reported in 2004 SCC (L&S) 654.** He also relied upon the Judgment of Supreme Court in **M.R. Gupta V/s. Union of India and Others reported in (1995) 5 SCC 628.** The next submission which is made by the learned Counsel for the petitioners was that the Central Administrative Tribunal, Calcutta Bench, had allowed the original application which was filed by a person who was similarly situated and was working in Calcutta and was, therefore, the said order having attained finality, the petitioners were entitled to be given the same benefit particularly when admittedly, the seniority of the petitioners is on All India Basis and some of the employees were working in Calcutta having succeeded, it was bounden duty of the respondents to have given the same benefit to other employees who were similarly situated. He relied upon the Judgment of the Supreme Court in the case of **State**

of Karnataka and Ors. V/s. C. Lalitha reported in 2006(1)SCT Page 596.

9. Learned Counsel appearing on behalf of the respondents, however, submitted that the Tribunal had correctly rejected the original application filed by the petitioners on the ground of limitation. He submitted that it was open for the petitioners to have filed the original Application in 2000 and 2002 challenging the revision of pay scales which was made in 1989.

10. We have given our anxious consideration to the submissions made on behalf of the petitioners and the respondents. In our view, the submissions made on behalf of the petitioners will have to be accepted. In the present case, it is an admitted position that the petitioners who are working in Bombay as well as other cities have a common All India Seniority List. Some of the employees working in Calcutta filed an application at Calcutta Bench which was allowed. The said order attained finality since the order was not set aside by the Apex Court. The review petition which was filed by

the respondents before the Central Administrative Tribunal, Calcutta Bench, was rejected. That being factual position, it was the bounden duty of the respondents to have given the pay scales to all its employees and it could not have restricted granting relief only to those employees who had filed original application at Calcutta Bench. If this position is accepted, it would give rise to an anomalous position whereby a person who is working in Bombay would get a lower salary than the person who is working at Calcutta and if he is transferred to Calcutta, he would get a higher pay.

11. The Central Administrative Tribunal, Mumbai, obviously erred in holding that the application is barred by limitation and failed to consider that cause of action which had accrued in favour of the petitioners was a continuing cause of action. Secondly, after the review petition which was filed by the respondents was dismissed by the Calcutta Bench, it was the bounden duty of the respondents to have given the same pay scale to all its employees similarly situated. This not having

been done, the petitions were filed by the similarly placed persons in 2000 and 2002. Therefore, it cannot be said that the said original application was barred by limitation. The Apex Court has in the case of **Basic Shiksha Parishad and Others (Supra)** has observed that where the employee was continuously working in the said post and salary was accruing every month that accorded her a continuing cause of action and the question of limitation did not arise in such a case. Similarly in the case of **M.R. Gupta (Supra),** the Supreme Court held that the case of claim for payment of correct salary according to Rules throughout the service gives rise to a fresh cause of action each time the salary was incorrectly computed and paid. The facts in the present case are also identical and therefore, the Tribunal erred in dismissing the application on the ground of limitation.

12. So far as the merits of the case are concerned, it is an admitted position that the employees working in Calcutta were given the revised pay scales of Senior Draughtsman. The seniority admittedly of the

petitioners and the rest of the employees working throughout India is All India Seniority. The order passed by the Central Administrative Tribunal, Calcutta Bench, having attained finality, it was the duty of the respondents to have given the same benefit as was given to the Calcutta employees, to all other employees similarly situated in India. The Supreme Court in the case of **State of Karnataka and others (Supra)** has observed in Para 18 as under ;-

> "Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. ....."

13. In the result, Writ Petition is allowed. The order passed by the Central Administrative Tribunal, Mumbai Bench, dated 20th June, 2003 in Original Application Nos.871/2000 and 693/2002 is set aside and

quashed. The respondents are directed to grant the same benefits to the petitioners as had been granted by the Central Administrative Tribunal, Calcutta Bench, to the applicants in Original Application No.757/1990.

14. Writ Petition is made absolute in the above terms. Under the circumstances, there shall be no order as to costs.

(DR.S. RADHAKRISHNAN, J.)

(V.M. KANADE, J.)